

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK  
BUFFALO DIVISION**

ROSALIE PIJACKI, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE PROCTER & GAMBLE COMPANY,

Defendant.

Civil Case No. 1:22-cv-00624

**DEFENDANT THE PROCTER & GAMBLE COMPANY’S NOTICE OF MOTION  
TO DISMISS PLAINTIFF’S COMPLAINT**

**PLEASE TAKE NOTICE** that Defendant The Procter & Gamble Company (“P&G”), through undersigned counsel, will move this Court at a date and time to be set by the Court, for an Order dismissing Plaintiff’s Complaint (ECF No. 1) with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

Plaintiff asserts claims for violation of §§ 349 and 350 of the New York General Business Law (“GBL”); violation of the “State Consumer Fraud Acts” of New Mexico, Utah, Montana, Idaho, and Alaska; breaches of express warranty, implied warranty of merchantability/fitness for a particular purpose, and the Magnuson-Moss Warranty Act (“MMWA”); negligent misrepresentation; fraud; and unjust enrichment. As described in the accompanying Memorandum of Law, all of Plaintiff’s claims fail as a matter of law because the Complaint fails to allege a false or misleading statement, a required element of each claim. Each claim also suffers additional, independent defects. Plaintiff fails to allege that she suffered an injury recoverable under GBL §§ 349 and 350, and she makes no attempt to allege the elements of the “State Consumer Fraud

Acts” or demonstrate that, as a New York resident, she has standing to sue under those non-New York statutes. Her warranty claims should be dismissed because Plaintiff did not provide timely pre-suit notice of the alleged breach and because there is no privity between Plaintiff and P&G. Plaintiff’s MMWA claim fails for the same reasons, and also because (a) the representation challenged by Plaintiff is not a covered “warranty” as defined in the MMWA, (b) Plaintiff cannot satisfy the \$25 amount-in-controversy threshold for MMWA claims, and (c) Plaintiff has not satisfied the 100-named plaintiff threshold for MMWA claims. Plaintiff’s fraud claim should be dismissed for failure to allege that P&G acted with fraudulent intent. Her negligent misrepresentation claim should be dismissed because Plaintiff fails to allege the requisite special relationship between Plaintiff and P&G and because the economic loss doctrine bars that claim. Finally, Plaintiff’s unjust enrichment claim should be dismissed as duplicative of Plaintiff’s other deficient claims, and because she fails to allege that Plaintiff conferred any direct benefits on P&G.

This Motion is based on this Notice of Motion, the accompanying Memorandum of Law, the pleadings, paper, and records on file in this action, and such oral argument as may be presented at the time of the hearing.

Pursuant to L.R. Civ. P. 7(a)(1), P&G intends to file and serve reply papers. All responses and replies will be due in accordance with the briefing schedule set by the Court.

Dated: November 2, 2022

Respectfully submitted,

/s/ Cheryl A. Possenti

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